
By: **Delegate Hubbard**

Introduced and read first time: February 4, 2004

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Construction Contracts - Retention Proceeds**

3 FOR the purpose of providing that certain retention proceeds may not exceed a
4 certain percentage of certain contracts or certain payments under certain
5 circumstances; providing that certain retention proceeds may exceed a certain
6 percentage of certain payments if certain owners reasonably determine that the
7 performance of certain contractors provides reasonable grounds for withholding
8 certain amounts; providing that certain retention proceeds may exceed a certain
9 percentage of certain payments if certain contractors reasonably determine that
10 the performance of certain subcontractors provides reasonable grounds for
11 withholding certain amounts; providing that certain retention proceeds may
12 exceed a certain percentage of certain payments if certain subcontractors
13 reasonably determine that the performance of certain other subcontractors
14 provides reasonable grounds for withholding certain amounts; defining a certain
15 term; providing for the application of this Act; and generally relating to
16 construction contracts and retention proceeds.

17 BY renumbering
18 Article - Real Property
19 Section 9-304
20 to be Section 9-305
21 Annotated Code of Maryland
22 (2003 Replacement Volume and 2003 Supplement)

23 BY adding to
24 Article - Real Property
25 Section 9-304
26 Annotated Code of Maryland
27 (2003 Replacement Volume and 2003 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That Section(s) 9-304 of Article - Real Property of the Annotated Code
30 of Maryland be renumbered to be Section(s) 9-305.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
2 read as follows:

3 **Article - Real Property**

4 9-304.

5 (A) IN THIS SECTION, "RETENTION PROCEEDS" MEANS MONEYS EARNED BUT
6 RETAINED UNDER THE TERMS OF A CONTRACT OR SUBCONTRACT:

7 (1) BY AN OWNER TO GUARANTEE PERFORMANCE OF THE CONTRACT BY
8 A CONTRACTOR;

9 (2) BY A CONTRACTOR TO GUARANTEE PERFORMANCE OF A
10 SUBCONTRACT BY A SUBCONTRACTOR; OR

11 (3) BY A SUBCONTRACTOR TO GUARANTEE PERFORMANCE OF A
12 SUBCONTRACT BY ANOTHER SUBCONTRACTOR.

13 (B) EXCEPT AS PROVIDED IN THIS SECTION:

14 (1) THE RETENTION PROCEEDS UNDER THE TERMS OF A CONTRACT
15 MAY NOT EXCEED 5% OF THE CONTRACT PRICE;

16 (2) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER THE
17 TERMS OF A CONTRACT FROM AN OWNER TO A CONTRACTOR MAY NOT EXCEED 5%
18 OF THE PAYMENT;

19 (3) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER THE
20 TERMS OF A CONTRACT FROM A CONTRACTOR TO A SUBCONTRACTOR MAY NOT
21 EXCEED THE PERCENTAGE OF RETENTION PROCEEDS FROM THE OWNER TO THE
22 CONTRACTOR;

23 (4) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER THE
24 TERMS OF A CONTRACT FROM A SUBCONTRACTOR TO ANOTHER SUBCONTRACTOR
25 MAY NOT EXCEED THE PERCENTAGE OF RETENTION PROCEEDS FROM THE
26 CONTRACTOR TO THE SUBCONTRACTOR.

27 (C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT THE WITHHOLDING
28 OF ANY AMOUNT DUE:

29 (1) FROM THE OWNER TO THE CONTRACTOR IF THE OWNER
30 REASONABLY DETERMINES THAT THE CONTRACTOR'S PERFORMANCE UNDER THE
31 CONTRACT PROVIDES REASONABLE GROUNDS FOR WITHHOLDING THE ADDITIONAL
32 AMOUNT;

33 (2) FROM THE CONTRACTOR TO ANY SUBCONTRACTOR IF THE
34 CONTRACTOR REASONABLY DETERMINES THAT THE SUBCONTRACTOR'S
35 PERFORMANCE UNDER THE SUBCONTRACT PROVIDES REASONABLE GROUNDS FOR
36 WITHHOLDING THE ADDITIONAL AMOUNT; OR

1 (3) FROM A SUBCONTRACTOR TO ANOTHER SUBCONTRACTOR IF THE
2 SUBCONTRACTOR DETERMINES THAT THE OTHER SUBCONTRACTOR'S
3 PERFORMANCE UNDER THE SUBCONTRACT PROVIDES REASONABLE GROUNDS FOR
4 WITHHOLDING THE ADDITIONAL AMOUNT.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
6 construed to apply only prospectively and may not be applied or interpreted to have
7 any effect on or application to any contract awarded before the effective date of this
8 Act.

9 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2004.